

To: Members of the Lowell School Committee

From: Mary E. Sheehan, Recording Secretary

Date: February 10, 2023

Subject: **Motion by Connie Martin and Jackie Doherty]: Request to have Recording Secretary, Mary Sheehan email the approved Scope of Services to the following attorneys: Gwen King of King and Nolan, Douglas McGarrah of Foley Hoag, and Michael Stefanilo of BHPK and request that they respond, in writing, with their statement of interest, their hourly rates, and their relevant experience in conducting similar investigations by Friday, February 10, 2023. As per statutory authority, the School Committee will plan to select the attorney to conduct the investigation at the next scheduled School Committee meeting on Wednesday, February 15, 2023.**

Please see the information below with the attached Statement of Interest and Relevant Experience from the following Attorneys.

**1. Attorney Gwen King, King & Nolan**

Attorney King provided the following response.

"Thank you, Mary, the invitation to submit a statement of interest is greatly appreciated. Unfortunately, at this time, I am committed to other matters that could potentially limit my ability to conduct this investigation in a swift and timely manner. Again, many thanks for the invitation."

**2. Attorney McGarrah, Foley & Hoag**

"We propose that the team working with the City of Lowell would be led by Maddy Rodriguez and supported by Emily Nash and Jasmine Brown, with Douglas McGarrah available for consultation on strategy at no charge." Please see the table of charges below:

Attorney	Title	Hourly Rate	10% Discount
Madeleine Rodriguez	Partner	\$875	\$788
Emily Nash	Associate	\$815	\$734
Jasmine Brown	Associate	\$570	\$513

**3. Attorney Stefanilo, BHPK**

Attorney Stefanilo provided the following response in his statement of interest. I have attached the entirety of the letter with the relevant experience materials.

"Finally, we are aware that school committees and municipalities must be cost-conscious and are often limited by budgetary constraints. As primarily municipal and school law attorneys who practice in employment law, we are sensitive to the issue of cost. For those reasons, we are willing to take on this investigation at a rate of \$350/hour. We anticipate that you will soon agree that we are worth far more than that, and that the value of our services to LPS in handling this investigation on behalf of the School Committee will be without measure."

*Motion to have SC Recording Secretary Mary Sheehan email below Scope of Services to: Gwen King of King and Nolan; Douglas McGarragh of Foley Hoag; and Michael Stefanilo of BHPK. Request the above-named attorneys respond with hourly rates and relevant experience to Mary Sheehan by Monday, Feb. 6. As per its statutory authority, the school committee shall select one attorney to conduct the investigation at a special meeting.*

## **Scope of Services: Investigation of Internal Complaints re LPS Hiring Practices**

### **About Lowell:**

The City of Lowell was founded in 1826 as a planned industrial community and has a long history of being a gateway for newcomers. With a current population of about 115K, Lowell is the fifth largest community in the Commonwealth. Lowell follows a Plan E form of government with three at-large and eight district Councilors elected to serve two-year terms. Selected by a majority of fellow Councilors, the Mayor leads the City Council while also serving as Chair of the School Committee, which is comprised of two at-large and four district members also serving two-year terms.

The Lowell Public Schools currently enrolls more than 14,100 students, pre-k through grade 12, in 27 schools, one High School currently undergoing significant renovation, a career academy, and three schools for students with disabilities. According to DESE 2022-23 enrollment data, Lowell student demographics include 39.8% Hispanic, 26.7% Asian, 21.8% white, 7.6% African American, and 4.1% Multi-Race Non Hispanic. DESE staffing data (2021-22) indicates the Lowell Public School District employs about 1,100 teachers and a total of 2,126 FTE staff.

### **Background on Request for Investigation:**

Several complaints were reported to the Lowell Law Department during October-November 2022. Prior to leaving her role as City Solicitor, Christine O'Connor emailed the Lowell School Committee on Nov. 20, 2022 recommending outside counsel be hired to investigate "recent complaints made to the Law Department alleging ongoing violation of the District's hiring policies, DESE regulations, and state law." (See attached letter.)

Further, the City Solicitor noted: "the allegations taken as a whole reach well beyond the otherwise exclusive jurisdiction of available grievance procedures. Specific claims of retaliation have also been made after individuals reported claims to supervisors, certain members of the Central Office, and the Union. As such, those who have come forward should at this stage be viewed as falling under the protection of the Whistleblower Act."

On Dec. 14, the Lowell School Committee voted to move forward and get outside counsel to look into the allegations addressed in the former City Solicitor's letter.

### **Scope of Services**

The Lowell School Committee is seeking to hire counsel to investigate the complaints and prepare a report with recommendations. The investigation could include interviews with upwards of 10-25 individuals including the former city solicitor, the complainants, relevant administrators and staff, as well as a review of pertinent documentation. There may be a need to expand investigative services if there is merit in the allegations, more complainants come forward, or further action is required. Prior to expanding the scope of services (should it be warranted), the selected Attorney will present results of the initial investigation to the Committee in an appropriate format as deemed by law.

**Attorney McGarrah, Foley & Hoag**



**Response to Request for Statement of Interest  
for Investigation of Internal Complaints Regarding LPS Hiring Practices**

**CITY *of* LOWELL**

**February 9, 2023**

**Key Contacts:**

Douglas McGarrah  
Partner  
Foley Hoag LLP  
Seaport West  
155 Seaport Boulevard  
Boston, MA US 02210-2600  
617.832.1217 phone  
dmcgarrah@foleyhoag.com

Madeleine K. Rodriguez  
Partner  
Co-Chair, Education Industry  
Foley Hoag LLP  
Seaport West  
155 Seaport Boulevard  
Boston, MA US 02210-2600  
617.832.1720 phone  
mrodriguez@foleyhoag.com



Thank you for inviting Foley Hoag LLP to submit a statement of interest regarding services related to an investigation of internal complaints regarding Lowell Public Schools' hiring practices. Foley Hoag as a firm – and the team profiled below – have the unique qualifications and experience to serve as counsel to the City of Lowell. Below you will find a summary of our qualifications, proposed team and hourly rates.

**Statement of Qualifications: DE&I Counseling, Defense & Investigations**

Recent cultural, social, and political developments have transformed the values and priorities of organizations of all sizes, regardless of industry. Regulators, prospective, former and current employees, students, consumers, and the public are demanding proactive action, compliance, data-driven results, and accountability. As a result, diversity, equity, and inclusion efforts - particularly those adopted by employers and educational institutions – are facing increased scrutiny and even legal challenges. How an organization chooses to respond will define its workplace culture, public brand, and legal liability.

Foley Hoag's diverse and multi-disciplinary team understands the challenges senior leaders and boards face in the wake of this increased scrutiny and accountability. We bring decades of experience successfully conducting sensibly designed confidential internal investigations concerning issues of board, officer, and employee misconduct and organizational culture and DEI. Our lawyers recognize the importance of acknowledging each organization's unique culture, risk tolerance, and needs, and provide practical and privileged advice to steer positive cultural change, while prioritizing minimizing disruption maintaining reputation. We are experienced at partnering with public relations professionals to manage reputational concerns arising from unexpected challenges.

We offer a comprehensive suite of services that includes developing broader policies and strategies to achieve DE&I goals and withstand legal challenges, as well as responding to immediate, sensitive situations.

Our team supports clients through this work because of our decades-long commitment to fostering inclusive and diverse communities and our own, comprehensive, and results-driven workplace DE&I strategy that has set us apart in the industry leader in the space. Members of our team are involved in Foley Hoag's own DE&I programs and initiatives, and serve in leadership roles addressing critical racial, ethnic, gender, and social justice issues in bar associations, local government, affinity organizations, non-profit foundations, and beyond. Partnering our deep knowledge of the issues in this space with an understanding of your institutional goals, we help you navigate highly sensitive areas and answer the call of our increasingly diverse society.

Notable experience includes:

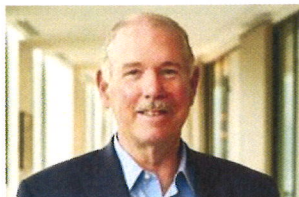
- Advise non-profits, municipalities, and educational institutions regarding race conscious admissions, hiring, and retention policies and practices, as well as broader institutional DEI strategic goals and communications.
- Represented the Museum of Fine Arts, Boston in investigation by the Massachusetts Attorney General concerning allegations of discrimination by patrons.



- Conducted independent investigation for secondary schools related to high-profile allegations of race discrimination at an athletic event.
- Conducted internal investigation and advised Board of Directors at public-facing institution concerning social-media complaint of racial discrimination; advised on issues of public relations concerns; drafted internal complaints and investigations policies.
- Conducted internal investigation into allegations of discrimination and retaliation at higher educational institution and advised on management and governance matters.
- Conducted a human rights impact assessment for a technology company relating to the impact of advanced technologies on BIPOC communities.
- Conducted an internal investigation for a board audit committee concerning allegations of potential misrepresentations by management to board and auditor.

### **Proposed Team**

We propose that the team working with the City of Lowell would be led by Maddy Rodriguez and supported by Emily Nash and Jasmine Brown, with Douglas McGarrah available for consultation on strategy at no charge.



**DOUGLAS MCGARRAH**

Partner

617.832.1217

[dmcgarrah@foleyhoag.com](mailto:dmcgarrah@foleyhoag.com)

For over 30 years, clients operating at the intersection of business and government have relied on Doug's strategic advice to help them manage government regulations and complete major development and infrastructure projects. Doug is a trained mediator and has served on Suffolk County and Norfolk County Superior Court Mediation Panels. He is the past chair of Foley Hoag's Administrative Law Department. Before joining Foley Hoag LLP in 1991, he served at the Massachusetts Executive Office of Transportation and Construction, first as Chief of Staff and later as Chief Legal Counsel for the Central Artery/Tunnel Project. He also served for six years as Legislative Assistant/Director of Economic Development in the office of U.S. Senator Paul E. Tsongas, and for two years as a legislative assistant to Massachusetts State Senator (former Congressman) John W. Oliver.



**MADELEINE K. RODRIGUEZ**

Partner  
Co-Chair, Education Industry  
617.832.1720  
mrodriguez@foleyhoag.com

Maddy is a litigator whose practice is built on a strong foundation of state, federal, and international trial and arbitration experience. As Co-Chair of the firm's Education practice, she principally represents colleges, universities, and school districts in civil cases, internal and regulatory investigations, and settlement negotiations. This work includes regularly advising education clients regarding DEI practices, including race conscious admissions and hiring policies, use of race-neutral alternatives, and overarching diversity statements and goals. She was the lead drafter or partner on the teams representing the Asian American Legal Defense and Education Fund (AALDEF) in connection with amicus briefs submitted in the District of Massachusetts, First Circuit, and U.S. Supreme Court supporting Harvard's and UNC's admissions practices. Maddy also currently serves as a member of the firm's Hiring Committee, co-leader of the Womxn of Color affinity group, and as the Executive Director of the Foley Hoag Foundation.

**EMILY NASH**

Associate  
617.832.3067  
enash@foleyhoag.com

Emily has significant experience representing education clients in both civil litigation and internal investigations. In 2022, Emily was the lead associate on the Foley team that filed an amicus brief with the U.S. Supreme Court on behalf of AALDEF in support of Harvard's and UNC's use of race conscious admissions. Emily also a member of the team that represented the Museum of Fine Arts, Boston in an investigation by the Massachusetts Attorney General concerning allegations of discrimination. In addition to her work at the firm, Emily teaches legal research and writing at Harvard Law School. She is also a founding board member of the Brave House, a nonprofit providing legal representation and holistic services to young immigrant women.

**JASMINE N. BROWN**

Associate  
617.832.3123  
jnbrown@foleyhoag.com

Jasmine Brown represents individual and corporate clients in a broad range of disputes and draws upon her previous roles to counsel and defend clients at all stages of litigation. She is passionate about Diversity, Equity, and Inclusion related work. Jasmine serves on the Board of Directors for the



Massachusetts Black Women Attorneys. Prior to joining Foley Hoag, Jasmine served as a Law Clerk to the Chief Justice Kimberly S. Budd of the Massachusetts Supreme Judicial Court.

**Fees and Budget**

Foley Hoag's previous engagement with the City of Lowell provided a 10% discount and we are pleased to be able to continue offering that same discount to the City for this work.

Attorney	Title	Hourly Rate	10% Discount
Madeleine Rodriguez	Partner	\$875	\$788
Emily Nash	Associate	\$815	\$734
Jasmine Brown	Associate	\$570	\$513

If we can provide further information about our qualifications, please do not hesitate to contact us. Thank you again for your consideration.

Respectfully Submitted,

**The Foley Hoag Team**  
Douglas McGarrah, Madeleine Rodriguez,  
Emily Nash, and Jasmine Brown



**Attorney Stefanilo, BHPK**



BRODY, HARDOON, PERKINS & KESTEN, LLP

**INVESTIGATIONS TEAM**

699 Boylston Street  
Boston, MA 02116

P (617) 880-7100  
F (617) 880-7171

MICHAEL STEFANILO, JR.  
mstefanilo@bhpklaw.com

LEONARD H. KESTEN  
lkest@bhpklaw.com

ERICA L. BRODY  
ebrody@bhpklaw.com

February 7, 2023

*Via Email Only – [mshEEhan@lowell.k12.ma.us](mailto:mshEEhan@lowell.k12.ma.us)*

Mary Sheehan  
Lowell Public Schools  
155 Merrimack Street  
Lowell, MA 01852

RE: *Statement of Interest: Lowell Public Schools Investigation*

Dear Ms. Sheehan,

We are delighted by your invitation to submit a statement of interest to the Lowell Public Schools to conduct a comprehensive investigation into internal complaints alleging unlawful hiring practices. At BHPK, this is what we do, and it is what we have done for nearly thirty years with unprecedented results. Our unique team-oriented approach to investigations, and decades of experience in municipal and education law, as well as being considered one of the top litigation firms in the field, sets us apart from other law firms and attorneys offering investigation services in the areas of employment and anti-discrimination law. We have a wealth of experience investigating and helping clients to navigate and resolve issues potentially implicating the state whistleblower statute and other protections against retaliation.

Since 1995, BHPK has handled thousands of legal claims and has investigated a countless number of employment-related issues on behalf of municipal and school clients. To date, our firm has represented approximately half of the municipalities in the Commonwealth, and presently serves as school committee counsel to nine school districts, a charter school, and an education collaborative. For several years, our attorney investigators have been handling employment investigations, including all types of discrimination and retaliation complaints, for schools and municipal clients with remarkable success. As investigators, we are professional, accessible, and knowledgeable; all things that are necessary when working with a school committee to investigate serious allegations and to recommend a workable solution.

Specifically, I am an attorney who has spent the past decade of my career evaluating employment claims on behalf of municipalities, schools, and employers. This is what I do in some capacity each and every day. I am also a nationally published author on anti-discrimination, harassment, and retaliation laws, in addition to being an author of the Massachusetts Continuing Legal Education text on School Law. I have been nationally recognized by multiple reputable organizations for my work as an attorney, including in the areas of employment law and civil rights, by the American Bar Association, Massachusetts Bar Association, Massachusetts Lawyers Weekly, Super Lawyers New England, and the National Law Journal.

BHPK founding partner, Leonard H. Kesten, oversees our investigations practice. Attorney Kesten is considered one of the preeminent trial attorneys in the Commonwealth, having tried over 150 jury trials in his 40-year career. Attorney Kesten's experience is second to none, and he provides invaluable oversight to our firm's investigations group to ensure that the client is as protected as possible from any unnecessary litigation down the road. This is an invaluable tool that we offer as part of our practice; having access to Attorney Kesten's decades of employment experience would be an indispensable resource to LPS, especially post-report when evaluating any next steps.

Finally, a critical part of any investigation of this potential magnitude is making sure that the scope of the investigation is well defined, the investigation thorough, and the procedures fair. To that end, our investigations team will also include my partner, Erica L. Brody, who is a former Suffolk County Assistant District Attorney, and who brings with her a wealth of experience conducting witness interviews, and training in investigation procedures from the Massachusetts Commission Against Discrimination. Together, Erica and I have recently conducted a number of employment investigations for other municipalities and schools, and have extensive experience with the applicable laws and investigation procedures to ensure that LPS conducts a comprehensive and meaningful investigation into these allegations.

We enclose with this letter some additional information about our investigations practice, and are always willing to answer any questions that you might have. I am available on my cell phone at any time: (617) 276-6731. My email address is also included at the top of this letter. Communication is key; and we are available for whatever questions you might have, whenever they might arise. We take this same open and available approach, to the extent allowable by law and policy, after we are retained as well.

Finally, we are aware that school committees and municipalities must be cost-conscious and are often limited by budgetary constraints. As primarily municipal and school law attorneys who practice in employment law, we are sensitive to the issue of cost. For those reasons, we are willing to take on this investigation at a rate of \$350/hour. We anticipate that you will soon agree that we are worth far more than that, and that the value of our services to LPS in handling this investigation on behalf of the School Committee will be without measure.

We truly look forward to the opportunity to work with you.

Very Truly Yours,

BRODY, HARDOON, PERKINS & KESTEN, LLP,

A handwritten signature in cursive script, reading "Michael Stefanilo, Jr.".

Michael Stefanilo, Jr., Esq.





# Municipal Policy Review, Training, & Internal Investigations Offerings

Over the last twenty-five years, **BHPK** has developed an outstanding reputation for its representation of cities, towns, schools, and law enforcement in Massachusetts. Our award-winning trial lawyers have seen firsthand how sound policies, effective training programs, and comprehensive investigation practices are critical to preventing workplace conflict and, if unavoidable, in defending litigation. At BHPK, we are here to help our clients create clear policies that management can rely on when responding to employment-related issues and that will set clear expectations for your employees.

Our lawyers are experts in the areas of civil rights and employment law, and have a depth and diversity of litigation experience that informs how these areas of the law intersect with the unique challenges facing municipalities.

**Leonard H. Kesten** is one of the preeminent municipal trial lawyers in Massachusetts. He has conducted over 150 jury trials with unprecedented success.

**Gregor Pagnini, Allison L. O'Connell, and Erica L. Brody** are experienced trainers and have earned certificates from the Massachusetts Commission Against Discrimination on the subjects of sexual harassment, anti-discrimination, and conducting internal investigations. For the past fifteen years, Attorney Pagnini has been advising and representing school systems in the areas of school, labor, employment and municipal law. Prior to joining BHPK, Attorney O'Connell spent years working as a Title IX coordinator and adjudicator at some of the nation's leading educational institutions. She has received hundreds of complaints and overseen scores of investigations into a wide-range of alleged misconduct. By drawing on real-life examples and experience, she provides effective and relatable guidance to clients. Attorney Brody, BHPK's training and investigations coordinator, brings a depth of experience delivering trainings to employers in both the public and private sectors. Her prior experience as a prosecutor prepared her to navigate the often sensitive and intensive fact-finding inquiries required in a prompt and effective investigation.

For more than a decade, **Michael Stefanilo, Jr.** has been guiding employers facing civil rights and employment actions, and leading internal investigations for municipalities. He is regularly published nationally on the subject of sexual harassment, anti-discrimination, and anti-bullying.

## Services



Leonard H. Kesten



Erica L. Brody

### Policy Creation and Audit

Our lawyers will work with you to revise existing policies to reflect current developments in the law and to create new and specific policies that reflect best practices.

### Up-to-Date Training Programs

We offer engaging, thoughtful, and interactive training programs catered to your individual policies and consistent with the most up-to-date developments in the law, including:

- MCAD-mandated training to prevent discrimination and sexual harassment in the workplace
- Management response to harassment and discrimination complaints
- Microaggressions and anti-bullying training
- Unconscious bias training
- Conducting employment investigations training
- Conducting Title IX investigations training
- Child Protection and Juvenile Justice training
- Law Enforcement and Use of Force training



Gregor A. Pagnini



Allison L. O'Connell



Michael Stefanilo, Jr.

### Independent Investigations

You can count on BHPK to conduct thorough and efficient investigations. Our attorneys have significant experience investigating a wide variety of sensitive employment issues that arise in the workplace and have worked with diverse constituencies across a broad array of disciplines to deliver expert advice to municipalities. Our lawyers routinely receive praise from complainants, respondents, and witnesses alike that through the investigative process they felt heard and supported, and from decision-makers that issues were handled thoughtfully, professionally, and with discretion.